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Dated November 18, 2009 Signature 
(Donna Forbit)

Docket No.: 66729/P034US/10614706
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Roy Schoenberg

Application No.: 10/824,705

Confirmation No.: 6791

Filed: April 15, 2004

Art Unit: 3626

For: AUTOMATED DATA ENTRY METHOD AND
SYSTEM

Examiner: K. K. Rapillo

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the rejections presented in the Office Action dated October 26, 2009 for the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal to reinstate the appeal previously requested July 24, 2009. The review is requested for the reason(s) stated below.

REASONS FOR REQUESTED PRE-APPEAL BRIEF REVIEW

Claims 1, 2, 4-21, and 24-41 are pending in the present application. All claims stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Ross* (U.S. Patent No. 7,076,436) in view of *Wheeler* (U.S. Patent Application Publication No. 2003/0097573) and further in view of *Puchek* (U.S. Patent Application Publication No. 2003/0091158). For the reasons discussed below, Appellant submits that the combination of *Ross*, *Wheeler*, and the newly-applied *Puchek* reference also fails to render the independent claims obvious, and thus requests pre-appeal brief review of the rejected claims in light of the remarks presented herein.

REMARKS

Independent claim 1 recites:

A data entry method comprising:
in a computer-based medical record including a plurality of data fields, defining one or more data fields for which desired field data is to be acquired; and
automatically populating at least one of the one or more data fields with desired field data from a data source, said automatically populating comprising:
receiving, by a computer-based application that is stored to a computer-readable medium and executing on a processor-based computer, a schedule for contacting said data source to prompt said data source for the desired field data for said at least one data field;
triggering, by said computer-based application, contacting said data source in possession of the desired field data in accordance with said schedule; and
receiving, by said computer-based application, the desired field data from the data source. (Emphasis added).

The applied combination of *Ross*, *Wheeler*, and *Puchek* fails to teach or suggest at least the above-emphasized limitations. The applied combination does not teach or suggest at least:

- Automatically populating at least one data field of a computer-based medical record (indeed, *Ross* expressly teaches a user manually populating fields of a medical record).
- Receiving by a computer-based application a schedule for contacting a data source, and triggering by the computer-based application contacting of a data source in possession of desired field data in accordance with the schedule.

Automatically populating at least one data field of a computer-based medical record

Ross permits manual entry of data into medical records, and does not appear to teach or suggest any technique for automatically populating at least one data field of a medical record by contacting a data source in accordance with a received schedule, as recited by claim 1. *Wheeler* is directed generally to communicating electronically regarding accounts, and addresses various uses of public and private keys, etc. for achieving secured communication. While *Wheeler* mentions a scenario in which its Account-Based Digital Signature (ABDS) system may be used for secure access by a patient to the patient's medical records (*see e.g.*, paragraphs 0225-0234), *Wheeler* does not suggest any technique for automatically populating any data field of a medical record by contacting a data source in accordance with a received schedule. Instead, in the exemplary scenario in which *Wheeler* applies its ABDS for a patient to access medical records, *Wheeler* describes that the patient may manually modify the medical records, and does not propose any automatic populating of any fields of the patient's

medical records, and certainly not any such automatic population by contacting a patient in accordance with a schedule.

The Office Action appears to concede (at pages 2-3 thereof) that *Ross* does not teach or suggest the recited automatically populating of one or more data fields of a medical record as recited by claim 1. However, the Office Action contends (at page 3 thereof) that *Wheeler* discloses this limitation, citing to paragraphs 0130 and 0299 of *Wheeler*. Paragraph 0130 expressly describes with reference to block 414 of its figure 4a that additional information is obtained from a prospective account holder. This cited paragraph of *Wheeler* does not provide any teaching or suggestion of automatically populating any data field(s). Paragraph 0299 of *Wheeler* does not describe the scenario in which a patient is accessing medical records, but is instead describing a completely different business application labeled under the heading “eBusiness Transaction Using Financial Institution Account” (see paragraph 0294). As noted in paragraphs 0175-0176 of *Wheeler*, it describes various distinct “business applications” for its ABDS, and while it describes an application to medical records (in paragraphs 0225-0234), the example described in paragraph 0299 concerns a completely separate application of the ABDS to an “eBusiness Transaction”. Paragraph 0299 of *Wheeler* mentions that in such an eBusiness Transaction scenario cookies may be used for automatically filling in certain fields of a web site display that is used in an ordering process for ordering a product or service from the website.

However, the scenario described in paragraph 0299 of *Wheeler* simply makes no mention of and appears to have no applicability whatsoever to medical records. And, the medical record access scenario described in paragraphs 0225-0234 (which *Wheeler* expressly identifies as a different business application) makes no mention of any such use of cookies or any other automatic populating of medical records. As is well known in the art, medical records are special types of data records due to the particularly personal and sensitive nature of the information they contain and the restrictive access to such information to only certain authorized users, such as a patient’s physician. While *Wheeler* proposes using cookies for automatically filling in fields of a web site’s ordering form for assisting a purchaser in ordering a product or service in its eBusiness transaction scenario, *Wheeler* provides no hint whatsoever of automatically populating data fields of a patient’s medical record in such medical record access scenario mentioned by *Wheeler*. Further, it is unclear how, if at all, cookies (which are

populated with information based on a user's browsing history) may be employed for populating data fields of a patient's medical record in the scenario proposed by *Wheeler*.

In addition, claim 1 expressly recites "automatically populating at least one of the one or more data fields [of the computer-based medical record] with desired field data from a data source". There is simply no suggestion regarding how browsing history or user preference information contained in the cookies referenced in *Wheeler* for an eBusiness Transaction may be employed for automatically populating a field of patient's medical record with desired data from a data source. *Puchek* is not relied upon as teaching or suggesting automatic population of any field of a medical record, nor does it do so. Thus, the applied combination fails to teach or suggest this limitation of claim 1.

Receiving a schedule and contacting the data source in accordance with the schedule

Additionally, claim 1 recites that the automatically populating comprises receiving a schedule for contacting the data source to prompt the data source for the desired field data, and triggering contact of the data source in accordance with the schedule. The Office Action relies upon *Puchek* as providing such a schedule for contacting a data source. However, *Puchek* does not teach automatically populating at least one field of a medical record with desired field data from a data source, and thus *Puchek* does not teach any such automatically populating that comprises receiving a schedule and triggering contact of the data source in accordance with the schedule, as recited by claim 1.

Puchek is directed generally to a monitoring and communication system for monitoring a supervised person, *see abstract of Puchek*. An automated phone call routine contacts a supervised person according to a contact plan, plays recorded messages or inquiries to the person, and records responses of the person. If a response is not received or if the responses do not fall within compliance guidelines, the contact plan is forwarded to personnel for follow-up contact or other assistance. While *Puchek* contacts a supervised person and records responses from the person, *Puchek* does not teach or suggest automatically populating any field of a computer-based medical record. *Puchek* does not appear to address medical records at all.

In addition, *Puchek* does not teach or suggest automatically populating a field of a computer-based medical record by: triggering by the computer-based application contacting of a data source in possession of desired field data in accordance with the schedule. Again, while *Puchek* contacts a supervised person and records responses from the person, *Puchek* does not teach or suggest automatically populating any field of a medical record with a response received from the person.

The Office Action relies on *Puchek* as supplying a schedule for contacting a supervised person, and appears to conclude that one of ordinary skill in the art would somehow combine such a contact schedule with the cookies used in *Wheeler* (that are proposed by *Wheeler* for use in an eBusiness Transaction) to somehow result in automatically populating a medical record, as opposed to the manual medical record populating technique expressly proposed by *Ross*. Appellant disagrees. Not only is the cookie-based technique of *Wheeler* not used in *Wheeler*'s medical record access scenario, but there is also simply no teaching or suggestion regarding how the use of *Puchek*'s schedule for contacting supervised persons could possibly be used in the cookie-based automatic populating of fields proposed by *Wheeler*. The contacting of supervised persons according to a schedule proposed by *Puchek* and the use of cookies for updating of fields of a web page proposed by *Wheeler* appear to be completely disparate concepts that are not used together in any way. Indeed, *Puchek* is concerned with contacting supervised persons for responses, whereas *Wheeler* employs a technique that uses cookies for populating fields of a web page (instead of contacting supervised persons for such field data). Further, neither the contact schedule of *Puchek* nor the cookie-based update technique of *Wheeler* are described as being used for automatically updating a medical record.

Independent claims 14, 20, and 33 are also believed to be patentable over the applied combination for reasons similar to those discussed above with claim 1. In addition, each of the dependent claims depends either directly or indirectly from one of the independent claims, and are thus likewise allowable over the applied art. Applicant respectfully requests that the review panel reverse the outstanding rejection of the claims. If a fee is due with this response, please charge our Deposit Account No. 50-3948, under Order No. 66729/P034US/10614706 from which the undersigned is authorized to draw.

Dated: November 18, 2009

Respectfully submitted,

By 

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